STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

GREATER COMMUNITY HOSPITAL EMPLOYEES ASSOCIATION, LOCAL 725 OF THE SERVICE EMPLOYEES INTERNATIONAL UNION, Complainant	)	
and	)	CASE NO. 4870
GREATER COMMUNITY HOSPITAL, Respondent.	)	

DECISION ON APPEAL

This case involves a prohibited practice complaint filed by the Greater Community Hospital Employees Association, SEIU Local 725 (the Association) pursuant to section 11 of the Public Employment Relations Act, chapter 20, Code of Iowa (Act) and chapter 3 of the rules of the Public Employment Relations Board (PERB or Board). In its complaint, the Association alleges that the Greater Community Hospital (Hospital) violated §§10.1 and 10.2(a), (e), (f) and (g) of the Act by refusing the Association's request for the names and salaries of the Hospital's administrative, managerial and supervisory personnel.

Following a hearing before an administrative law judge (ALJ), the ALJ issued a Proposed Decision and Order, finding that the Hospital did not violate the Act. The Association filed the instant appeal with the Board. Oral arguments were subsequently presented to the Board by Charles E. Gribble, attorney for the Association, and Leon R. Shearer, attorney for the Hospital. Both filed briefs on appeal.

Based upon the entire record in this matter, and the briefs and arguments of the parties, we make the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Association represents a bargaining unit of approximately 140 professional and non-professional employees, and excludes 42 administrative, managerial, and supervisory employees.

The Association and the Hospital negotiated a July 1, 1991 to June 30, 1994 collective bargaining agreement which included a wage and insurance reopener provision for the 1993-94 contract year. Pursuant to the reopener provision, the Association timely requested the reopening of contract negotiations, which subsequently began. The Association's initial wage proposal included a 5% "across-the-board" increase for each bargaining unit employee. The Association did not propose changes in health insurance. The Hospital's initial wage proposal did not include a proposal for an "across-the-board" wage increase, and it initially proposed that bargaining unit employees contribute more money toward monthly insurance premiums. Sometime after December 2, 1992, the Association and Hospital reached agreement, during mediation, on wage and insurance issues for the 1993-94 contract year.

In October, 1992, the Association's attorney, Charles Gribble, wrote to the Hospital's chief negotiator, Leon Shearer, requesting certain salary information regarding the Hospital's non-bargaining unit personnel. The letter stated, in relevant part:

* * *

> Negotiations between the Association and the hospital will commence this fall on insurance and a wage reopener. The Association is requesting from the hospital the salaries of hospital administrators, the date of their most recent pay increase, and the amount of that increase. The Association requests this wage information concerning administrators in order to knowingly and intelligently prepare for forthcoming negotiations. Specifically, the Association requests this information in order to compare administrative raises to those received by bargaining unit personnel and to determine the hospital's ability to pay as reflected in part by the wage rates and recent increases of administrators. (Association exhibit 7).

In addition to the reasons for the salary information contained in Gribble's letter, Association Representative Diane Reid testified that reviewing the names and salaries of Hospital non-bargaining unit personnel allows the Association to accurately determine how any "turnover" in non-bargaining unit jobs affects the amount of money available for wage increases for bargaining unit employees. Reid also testified that accurate salary information was requested in order to compare the effect of the same percentage "across-the-board" wage increase on the actual dollars received by individual bargaining unit and non-bargaining unit personnel. Reid noted that the same percentage "across-the-board" wage increase for bargaining unit and non-bargaining unit personnel widens the existing wage disparity between the two groups. Reid also noted that sometime during the bargaining process, the Hospital gave the Association a list of salaries for individuals in the bargaining unit. However, the Association did not receive the same salary information for the Hospital's non-bargaining unit personnel.

In November, 1992, Shearer responded to Gribble's letter. Shearer wrote, in relevant part:

* * *

> Without agreeing that your client has a right to have the requested salary information and increases, I am authorized to do the following:
>
> 1. I am representing that the supervisory people during the last year received not more than a 3 percent salary increase;
>
> 2. We will give you a breakdown of totals from financials verifying that such an increase was in fact made; and
>
> 3. We will authorize the President of the Union and the Business Representative of the Union to verify these facts by perusal of records.
>
> The above information is given with the assurance that your representatives will not reveal exact salaries of any of the supervisors to the negotiating team and will pledge that they will keep such information confidential. I think such a request is most reasonable, but we would consider other alternatives to keep the confidentiality of our clients in check. (Association exhibit 8).

On December 9, 1992, Reid wrote the Hospital's Director of Administrative Services, David Brokaw. The letter requested certain Hospital financial information, including the following:

* * *

> 5. Name of each hospital administration/management employee who was employed at the hospital at any time for any length of time beginning July 1, 1988.
>
> 6. The wage history of every administration/management employee identified in (5) above including specifically the salary on July 1, 1988, and any and all increases paid to that administration/ management employee to date. (Association exhibit 9).

On December 11, 1992, Shearer wrote to Reid, stating, in relevant part:

* * *

> . . . I will be providing you with a total cost paid to the administration/management group and an indication as to the percentage of increase given to that group on the average during the period in question. . . . The Hospital would strenuously resist giving you the exact compensation history for each of the individuals. They feel that such information is a private matter and that the information they are assembling will allow you to satisfactorily handle your bargaining responsibility. They continue to feel very strongly about not disclosing individual salary and compensation. (Association exhibit 10).

On January 6, 1993, Brokaw, in a letter to Reid, provided the following information:

* * *

> Per Leon Shearer's prior response, I will provide you with a percent increase given to management and administrative personnel as a group for the period 1988 to present. GCH policy has been to set management raises at a flat percent approved by the Board of Trustees at budget approval time. Every year there are a few exceptions that may fall out of the range because we use the IHA salary survey as our Salary Bible and sometimes adjustments are needed outside the range, above or below.

YEAR	PERCENT
6-30-93	3 - 5% Range
6-30-92	3% mgt, 0% admin.
6-30-91	6%
6-30-90	5 - 7%
6-30-89	7%
6-30-88	5.2%

(Association exhibit 11)

Brokaw has served on the Hospital's bargaining team since the first contract negotiations in 1986. He testified that the Hospital's response to the Association's request for the salaries of non-bargaining unit personnel during negotiations for the 1993-

94 labor agreement was consistent with the Hospital's response to similar Association requests made during previous contract negotiations. Brokaw also testified that the Hospital has consistently denied the Association's request for such information because individual non-bargaining unit salaries are not relevant to negotiations over bargaining unit wage rates. Brokaw further testified that Iowa Code §347.13(15) requires the Hospital to release individual salaries if all or part of the salaries are funded by taxes, but that since the Hospital does not use tax revenues to pay salaries, the Hospital is not legally obligated to release the salaries of non-bargaining unit personnel. Brokaw noted that the Hospital receives approximately 5% of its total revenue from taxes, and that the Hospital allocates this tax revenue, as required by law, for social security payroll taxes, contributions to the Iowa Public Employees' Retirement System, ambulance fund, and general improvements and maintenance on the Hospital's facilities. Brokaw testified that, consistent with Iowa Code §347.13(15), the Hospital is obligated each year to publish, by job classification and category, the total salaries paid by the Hospital. On September 9, 1992, the Hospital had published in a local newspaper, the Creston News Advertiser, the total salaries paid in 32 separate job classifications and categories for fiscal year July 1, 1991 through June 30, 1992. These included the following salaries for non-bargaining unit personnel: Nursing Administration $96,608; Administration $86,041; Personnel $28,850 and Accounting $89,564. (Hospital exhibit 1). Brokaw noted that

the Hospital's audited Financial Reports for fiscal years 1991 and 1992, which were provided to the Association, contain total salaries paid for fiscal and administrative services. The Hospital's 1991 and 1992 Financial Reports show the actual dollar increases or decreases for the fiscal and administrative services categories.

With respect to the 1993-94 contract negotiations, Brokaw and Hospital Human Services Director Jolene Griffith testified that the Hospital did not make an "inability-to-pay" argument regarding the Association's wage proposals. However, the Hospital did assert the Association's offer was not "economically viable."

Reid testified that the Hospital's refusal to provide the names and salaries of non-bargaining unit personnel did not prevent the Association and Hospital from reaching a voluntary 1993-94 collective bargaining agreement. Reid also testified, however, that without the salary information requested by the Association, "You never know that you got all you can get."

The record indicates that, on one or two occasions, the Association attempted to obtain the information it sought by requesting it through the local county attorney pursuant to procedures set out in the open records law, Iowa Code ch. 22. The county attorney demanded the information be provided by the Hospital, but the Hospital refused. It appears from the record that the Association did not attempt to pursue any remedies under the open records statute beyond that level.

CONCLUSIONS OF LAW

The Association alleges the Hospital violated §§10.1 and 10.2(a), (e), (f) and (g) of the Act by refusing to provide the information requested by the Association. Those sections provide:

> 20.10 Prohibited practices.
> 1. It shall be a prohibited practice for any public employer, public employee or employee organization to willfully refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.
> 2. It shall be a prohibited practice for a public employer or the employer's designated representative willfully to:
> a. Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter.
>
> ***
>
> e. Refuse to negotiate collectively with representatives of certified employee organizations as required in this chapter.
> f. Deny the rights accompanying certification or exclusive recognition granted in this chapter.
> g. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this chapter.

The ALJ determined that the Hospital did not violate the Act because the information requested was, in the ALJ's view, confidential information pursuant to Iowa Code §347.13, and not a matter of public record. Before the Board, the Association argues that the ALJ was incorrect in determining the information sought to be non-public, but that, even if the ALJ was correct, the Association has a right to receive even confidential information that is relevant and necessary for bargaining. The Association argues the information sought is relevant, and that the incomplete

summarized data the Hospital sought to substitute for the requested data failed to substantially comply with the Association's request.

The Board has decided a number of cases in which principles concerning an employer's duty to provide information to an employee organization have been established.

An employee organization certified under the Act has two major responsibilities: negotiating and administering collective bargaining agreements. In order to bargain intelligently and, if necessary, prepare for impasse procedures, an employee organization must have information.[1] A public employer has a duty to timely provide information requested by an employee organization if the information sought is clearly specified and may be relevant to the bargaining process,[2] and the information sought is not otherwise protected or privileged.[3] The employee organization may be assessed the actual costs of compiling the information requested.[4]

The Hospital argues that the information sought by the Association in this case is not relevant to the bargaining process because the Hospital has not advanced an "inability to pay"

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[1]Bettendorf-Dubuque Community School District, 76 PERB 598 & 602; Iowa Western Community College, 76 H.O. 702.

[2]Iowa Western Community College, 76 H.O. 702; Southeast Polk Education Association, 78 PERB 1068, aff'd, Polk Co. Dist. Ct. No. CE 9-4818 (1978).

[3]Greene Education Association, 80 PERB 1531; Lynnville-Sully Education Association, 81 H.O. 1815; Southeast Polk Education Association, 78 PERB 1068, aff'd, Polk Co. Dist. Ct. No. CE-9-4818 (1978).

[4]Southeast Polk Education Association, supra, fn. 3.

argument, and because the wage information requested relates to non-bargaining unit members.

PERB has previously established a broad relevancy standard in this type of case.

In Iowa Western Community College, the ALJ stated:

> The spectrum of relevant information for public sector employee organizations in Iowa is much broader than would be normally considered relevant for private sector unions because the public sector employee organization in Iowa faces the prospect of preparing a fact-finding and/or arbitration presentation. An employee organization at the fact-finding or arbitration stage is required to justify the reasonableness of its proposals before a third party neutral who is unlikely to be familiar with the financial situation of the employer or the wage history of the bargaining unit employees.[5]

In Washington Education Association, a case in which the employee organization sought information about the employer's insurance contributions for non-bargaining unit administrators, the ALJ said:

> The "may be relevant" standard ... is broad and requires the furnishing of information unless it "plainly appears irrelevant". A more restrictive view of relevance would require unrealistic anticipation about either the importance of certain information to bargaining or of what a neutral fact-finder or arbitrator might find significant in making a decision. A broad relevancy standard is based on the assumption that free access to information is critical to the collective bargaining process and necessary for the parties to intelligently bargain.

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[5]Iowa Western Community College, 76 H.O. 702.

> The information sought here by the Association, namely the District's contribution to insurance premiums for certain administrators in the District, was sufficiently related to the bargaining subject at issue, the District's contribution to insurance premiums for bargaining unit members, so as to be within the above standard of relevance. Accordingly, the District erred in refusing the requested information on the basis of relevance.[6]

Under private sector law and in some other public sector jurisdictions, wage and fringe benefit information relating to bargaining unit employees is considered to be presumptively relevant, whereas sufficient reasons must be articulated by the union to support requests for information relating to employees outside the bargaining unit.[7]

In addition, in the private sector, there is a special duty imposed on the employer to supply data not normally otherwise subject to inspection in support of a claim by the employer of an inability to pay increased wages.[8]

As previously discussed, the Board has determined that the relevancy standard is broader in the Iowa public sector that in the private sector. However, even if we were to apply a private sector standard here, as the Hospital urges, we believe the Association has articulated sufficient reasons to dictate that the information

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[6]Washington Education Association, 80 PERB 1635.

[7]Morris, The Developing Labor Law, 3rd Ed., BNA, Inc., (1992), pp. 659-660; Soule Glass and Glazing Co. v. NLRB, 107 LRRM 2781 (1st Cir. 1981); Moraine Park Support Staff Assoc., Case 31, No. 45188 MP 2438, Decision No. 26859-B, Wisconsin ERC, August 9, 1993.

[8]Morris, supra, at pp. 651-652, fn. 7. See also Sergeant Bluff-Luton Education Association, 77 PERB 984.

requested may be relevant to bargaining and impasse procedures. In addition, we believe the Hospital has created an "ability to pay" issue of sorts here by informing the Association that its demands were not economically viable. The Association told the Hospital it needed the information in order to prepare for forthcoming negotiations--specifically, in order to compare administrative raises to those received by bargaining unit personnel and to determine the Hospital's ability to pay as reflected, in part, by the wage rates and recent increases of administrators. It certainly cannot be said that such information "plainly appears irrelevant", or that an arbitrator, who must, pursuant to §20.22(9), consider certain criteria "in addition to any other relevant factors" (emphasis added), would find such information irrelevant.

In Sergeant Bluff-Luton Education Association, 77 PERB 984, the Board concluded that "the information requested need not be provided in the exact form requested, so long as it substantially meets the request." Here, although the Hospital offered to provide some information to the Association regarding general groupings of administrative employees and ranges of wage increases, we agree with the Association that this was insufficient. Likewise, we agree that the Hospital's offer to allow certain union officials access to the information requested, if they agreed to keep the information secret from other union negotiating team members and agreed not to use it in impasse proceedings, did not substantially meet the Association's request.

The Hospital's next major argument goes to whether the information requested is privileged or confidential. The Hospital argues that although it is generally subject to the provisions of Iowa Code chapter 22, the open records law, which would ordinarily compel disclosure of this information, Iowa Code §347.13(15), dealing with County Hospitals, constitutes an exception to the open records law that protects the names and salaries of administrators from disclosure. Section 347.13(15) provides:

> There shall be published quarterly in each of the official newspapers of the county as selected by the board of supervisors pursuant to section 439.1 the schedule of bills allowed and there shall be published annually in such newspapers the schedule of salaries paid by job classification and category but not by listing names of individual employees. The names, addresses, salaries, and job classifications of all employees paid in whole or in part from a tax levy shall be a public record and open to inspection at reasonable times as designated by the board of trustees.

The Board and other public sector jurisdictions have recognized that an employee organization's right to information under the collective bargaining statute is distinct from the right of the general public to access to public documents under general open records provisions.

The Florida Public Employment Relations Commission has stated:

> A bargainer's right to be supplied with relevant information is a right separate and distinct from that of access to public documents under Florida's Public Record Act, Chapter 119, Florida Statutes (1981). Certain information relevant to the collective bargaining process, such as work products under Section 447.605(3), may be available to a party under a request pursuant to the collective bargaining law but unavailable to a

> member of the public pursuant to a public records request.[9]

In Lynnville-Sully Education Association, 81 H.O. 1815, the ALJ stated:

> Chapter 68A[10] addresses the right of the public to examine records maintained by the state or its subdivisions. However, it does not relieve a public employer of the obligation to provide information to the certified bargaining agent for the processing of grievances, for the status of an employee organization is different from that of a member of the general public.[11]

In Southeast Polk, the Board noted that the Iowa open records law "concerns the right of the public to examine records, not the right of a party to the collective bargaining contract to secure information."[12]

Notwithstanding this principle, the status of information under the open records law may be of some interest because, where information requested is available to the general public under the open records provisions, it certainly cannot be argued that the information is confidential as to the employee organization. We believe that such is the case here.

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[9]City of Hollywood, Florida ERC Case No. CA-82-023, 82U-255, July 29, 1982.

[10]Iowa Open Records provisions were formerly contained in Iowa Code chapter 68A, now chapter 22.

[11]See also, Greene Education Association, 80 PERB 1531.

[12]Southeast Polk Education Association, 78 PERB 1068.

Relying on two opinions of the Iowa Attorney General,[13] the Hospital contends that §347.13(15), set out above, constitutes an exception to the general chapter 22 open records provisions. Even assuming this interpretation is correct, we conclude that the Hospital does not fall within any §347.13(15) exception.[14]

Section 347.13(15) provides that the names, addresses, salaries and job classifications of employees are matters of public record if those employees are paid, in whole or in part, from a tax levy. The Hospital concedes that it receives approximately 5% of its total revenues from taxes, and that the Hospital allocates this tax revenue to pay certain employee payroll expenses including the Hospital's contributions towards social security taxes (a payroll tax on the employer) and the Hospital's contribution to the Iowa Public Employee's Retirement System, a pension program or retirement system for employees.

In our view, the relevant inquiry in this case is not, as the ALJ and A.G.'s opinions assumed, whether these items are included in the definition of the term "salary", but rather whether they are included in the concept of "pay". (If employees are paid, in whole or in part, by a tax levy, their salaries are open records).

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[13]Op. Att'y Gen. #79-8-8 (August 15, 1979); Op. Att'y Gen. #88-7-2(L)(July 14, 1988).

[14]We have serious doubts as to whether §347.13(15) was intended by the legislature to operate as an exception to chapter 22. However, this issue need not be addressed in order to resolve this case, and would be more properly pursued and decided in district court pursuant to the remedial provisions of chapter 22.

The Iowa Supreme Court has clearly established that open records provisions are to be liberally construed, that a presumption exists in favor of disclosure of public records, that the government carries the burden of justifying nondisclosure, and that exemptions to disclosure are to be given a narrow construction.[15]

In order to give effect to the above rule of construction, it appears to us that the concept of "pay" in §347.13(15) should be given a broad construction and interpreted as encompassing all types of compensation or remuneration, including wages, salaries, fringe benefits, retirement benefits, and other payroll tax contributions, especially in view of the statute's apparent recognition of a distinction between "pay" and "salaries". Accordingly, we conclude that the information sought by the Association is subject to public disclosure, that it therefore cannot be deemed confidential in the face of the Association's request, and that the Hospital had a duty to provide the information requested.

Having so concluded, we need not reach the issue of whether the Association was entitled to the information even if it was not subject to open records provisions.

CONCLUSION

The information requested by the Association concerning the names and wage history of Hospital administrators may be relevant

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[15]City of Dubuque v. Telegraph Herald Inc., 297 N.W.2d 523, 526-527 (Iowa 1980).

to the bargaining process, was not confidential, and should have been timely provided by the Hospital to the Association upon request.

By refusing to provide the information requested, the Hospital violated sections 20.10(1) and 20.10(2)(e) and (f) of the Act. In order to remedy these violations, we issued the following:

ORDER

Greater Community Hospital shall provide the Association with the information previously requested (or allow the Association access to the information and copying) and shall cease and desist from further violations of the Act.

The Association's request for attorney fees is denied.

DATED at Des Moines, Iowa this 12th day of May, 1994.

PUBLIC EMPLOYMENT RELATIONS BOARD

RICHARD R. RAMSEY, CHAIRMAN

M. SUE WARNER, BOARD MEMBER

DAVE KNOCK, BOARD MEMBER